

[Record of Proceeding]

Section 21081.6 of the Public Resources Code is amended to read:

21081.6. (a) When making the findings required by paragraph (1) of ~~subdivision~~ *subsection* (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify *the accuracy and completeness of the record of proceedings* not later than 60 days from the date that the request specified in ~~subdivision~~ *subsection* (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with ~~any law or rule of court~~ *subsection (b)(5), below.*

~~(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.~~

(2) Within 45 days of receipt of the plaintiff or petitioner's request that the respondent public agency prepare the record of proceedings, the custodian, specified pursuant subsection (a)(2) of section 21081.6, shall make the documents or other material that constitute the record of proceedings available to the plaintiff or petitioner for a five-day review period, along with an index of record documents and a written estimate of the costs of (1) photocopying the record documents or (2) scanning of the record documents or materials into an electronic format, at the location specified pursuant to subsection (a)(2) of section 21081.6. During the five-day review period, the plaintiff or petitioner may request that additional documents in the agency's files be included in the record, or that documents that the plaintiff or petitioner contends are not properly part of the record be removed from the record. During the five day review period the plaintiff or petitioner may also propose a more cost effective alternative method of preparation of the record of proceedings consistent with the time limits set forth in (b)(1). The respondent public agency shall consider any such request and/or proposal in good faith and, if it decides not to comply with such request and/or proposal, respond in writing with its reasons for not complying with such request and/or proposal.

(3) The respondent public agency shall not charge any fee for assembling the documents that make up the record of proceedings, making the specified documents available to the plaintiff or petitioner, or preparing the index of the record document.

(4) The respondent public agency shall make reasonable arrangements to complete the photocopying or scanning of the record documents or materials into an electronic format, paginating the record documents, and binding the record volumes in an expeditious manner. The record of proceeding must be organized in a manner reasonably designed to allow the public to understand the basis for the lead agency's decision.

(5) Within five days of receiving its copy of the record, the plaintiff or petitioner shall pay the respondent public agency's reasonable actual costs of copying or scanning, paginating, and binding the court's copy of the record and the plaintiff or petitioner's copy of the record, which costs shall be recoverable by cost bill if the plaintiff or petitioner is the prevailing party in the action or proceeding brought pursuant to Section 21167. The respondent public agency and any real parties in interest shall pay the actual costs of copying or scanning, paginating, and binding their copies of the record, which reasonable costs shall be recoverable by cost bill if the respondent public agency is the prevailing party in the action or proceeding brought pursuant to Section 21167.

(c) The time limit established by ~~subdivision~~ subsection (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in ~~this section-paragraph (1) of subdivision (b)~~, or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include ~~, but is not limited to, all of the following items:~~

~~(1) All~~ Written materials, including any project application materials, describing the project reviewed pursuant to this division.

~~(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project. The final environmental document completed for the project pursuant to this division.-~~

(3) Correspondence and any written evidence submitted by other public agencies and members of the public during any scoping, review or comment period noticed by the agency pursuant to this division.

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~~(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.~~

~~(4) Any transcript or minutes of *public hearings during the proceedings* at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document *on for*, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.~~

~~(5) Written materials submitted to the decision-making body of the public agency. All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.~~

~~(6) All final reports prepared by agency staff.~~

~~(7) Written materials documenting or reflecting the public agency's final action on the project and its final action taken in compliance with this division, including any order, resolution, ordinance, and any findings, statement of overriding considerations, and mitigation, monitoring and reporting program approved, adopted, or enacted by the agency.~~

~~(8) Written materials reflecting the public agency's compliance with the consultation and noticing requirements of this division, including notices, documents pertaining to publication, mailing and posting of notices, and documents distributed or published by the agency regarding scoping and consultation with other agencies and members of the public pursuant to this division.~~

~~(9) Any other written materials that the agency determines are relevant to its compliance with this division.~~

~~(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.~~

~~(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.~~

~~(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.~~

~~(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and~~

~~all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.~~

~~(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.~~

~~(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.~~

(f) In preparing the record of proceedings, ~~the party preparing the record~~ *respondent public agency* shall strive to do so at reasonable cost in light of the scope of the record. *Where it is cost effective and feasible to do so, the record of proceedings shall be prepared in an electronic format that is easily searchable. Reviewing courts are encouraged to accept the lodging of electronically formatted records.*

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this ~~subdivision~~ *subsection* precludes an election to proceed by appendix, as provided in Rule 5.1 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.